As a general rule a trespasser upon a track, who fails to make use of his senses to keep himself informed of the approach of trains will be held guilty of contributory negligence, and cannot recover for an injury, notwithstanding concurrent negligence on the part of the railroad company. 1. *Thompson on Negligence* 449; *Elwood* v. *N. Y. C. & H. R. R. Co.* 4 Hun, 808.

A number of American states follow the English rule, (3 & 4 Vict. c. 97, § 16) and hold that railroad companies are under no obligations to take precautions against trespassers: *Mulherrin* v. *D. L. & W. R. R. Co.*, 81 Pa. St. 366, and one who steps upon a railroad track, does so at his peril. *L. S. & M. S. R. R. Co.* v. *Hart*, 20 Ill. 478.

NEGLIGENCE—PROXIMATE CAUSE.—Plaintiff, aged 69, was talking to a friend, who held his arm, when defendant, weighing 235 pounds, in passing greeted this friend by seizing his arm and drawing him aside so that the plaintiff fell and was injured, Defendant's act was friendly, and was a customary greeting. Defendant did not notice plaintiff, or know that he fell. In an action for damages for wilful assault, *Held*, that defendant's act was the proximate cause of the injury, and constituted wilful assault, for which recovery may be had. *Reynolds* v. *Pierson* (1902), — Ind. —, 64 N. E. Rep. 484.

The court said that since the defendant might have passed without interfering with the person of any one, his failure to do so implied his willingness to cause the injury inflicted, thus using the language employed in *Mercer* v. *Corbin*, 117 Ind. 450, 3 L. R. A. 221, upon which it mainly relies. Negligence seems to be presumed rather than based upon proof. That the cause was in its nature accidental is lost sight of. While the defendant was exercising a legal right his intent is not considered. That it should be is held by 1 HILLIARD ON TORTS, 190; *Paxton* v. *Boyer*, 67 Ill. 132; *Hoffman* v. *Eppers*, 41 Wis. 258-9. That the defendant's act was the proximate cause of the injury is not in accord with the great weight of authority upon this matter; as, *Milwaukee R. R. Co.* v. *Kellogg*, 94 U. S. 469; *Penna. R. R. Co.* v. *Hope*, 80 Pa. St. 373, 21 Am. Rep. 100; COOLEY ON TORTS, 91, 752, 801. This decision goes further than any previous case of like nature, and is not sustained by authority. See POLLOCK ON TORTS, 36, 37; SHEAR. & RED. ON NEG. 10; *Bullock* v. *Babcock*, 3 Wendell 391; *Johnson* v. *McConnell*, 15 Hun, 293; *Ricker* v. *Freeman*, 50 N. H. 420; *Wright* v. *Clark*, 50 Vt. 130; 1 Bingham 213; *Brown* v. *Kendall*, 6 Cush. 292; *Morris* v. *Platt*, 32 Conn. 75; *Harvey* v. *Dunlop*, Hill & D. Supp. N. Y. 193; *Bizzell* v. *Booker*, 16 Ark. 308; AMER. & ENG. ENCYC. LAW, I, 272, XVI., 406; 1 ADDISON ON TORTS, 510.

PLEADING—SUFFICIENCY OF DECLARATION—FRAUD.—A had a worthless lease. He transferred it to his brother-in-law, who, in accordance with A's plans, made a deed to one B, expressing a consideration of $100,000. A then paid B to execute a trust deed on the property for $75,000 to C, a trust company, securing notes of B to that amount, the former placing the notes on the market. The plaintiff, relying on the recital of consideration in the trust deed and the statements in the notes, bought certain of the paper. Finding B not responsible she brings an action of deceit against A. *Held*, that a declaration containing the above facts states a good cause of action. *Leonard* v, *Springer* (1902), — Ill., —, 64 N. E. Rep. 299.

The law as to what constitutes fraud is clear; difficulties arise only when the rule is applied to particular facts. False representations made to the public are actionable when the plaintiff has been injnred by relying on them. *Morse* v. *Swits*, 19 How. Prac. (N. Y.) 275; *Bartholomew* v. *Bentley*, 15